

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.07.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.S.SUNDAR**
and
THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

W.A(MD)No.662 of 2022
and
C.M.P.(MD)No.5626 of 2022

S.Arputhanantham

Vs.

... Appellant

1.The Government of Tamil Nadu,
represented by its Additional Chief
Secretary to Government,
Public (Police) Department,
Secretariat, Chennai – 600 009.

2.The Director General of Police of
Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.

3.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

4.The Principal Accountant General (A and E),
361, Anna Salai,
Teynampet, Chennai – 600 018.

5.K.Anbalagan

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.8579 of 2020, dated 19.04.2022.

For Appellant :Mr.A.Thirumurthy

For R1 to R3 :Mr.J.Ashok

Additional Government Pleader

For R4 :Mr.P.Gunasekaran

JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

This Writ Appeal is filed challenging the order passed in Writ Petition W.P.(MD)No.8579 of 2020, dated 19.04.2022.

2. The prayer in the writ petition in W.P.(MD)No.8579 of 2020 is for issuance of a Writ of Certiorarified Mandamus, to quash order in Rc.No.16336/NGB.1(1)/2019, dated 10.02.2020, passed by the 2nd respondent and consequently, to direct the respondents to include the name of the petitioner as Sl.No.95(A) [i.e., above the petitioner's junior Mr.K.Anbalagan

(Sl.No.96)] in the panel of Sub Inspector of Police (Taluk) fit for promotion as Inspector of Police (Taluk) for the year 2019-2020 (crucial date 01.06.2019) published in the Memo Rc.No.12667/NGB-I(1)/ 2019, dated 30.07.2019, of the 2nd respondent and to promote the petitioner as Inspector of Police (Taluk) prior to the date of retirement of the petitioner on 30.06.2019 and to grant all the service, monetary and revised pensionary benefits within a time limit to be fixed by this Court.

3. The facts as stated in the affidavit filed along with the writ petition is that the petitioner was appointed as Police Constable Grade II in Tamil Nadu Special Police III Battalion on 11.01.1982 and promoted as Police Constable Grade I from 01.09.2000, then, as Head Constable from 05.10.2000. The Superintendent of Police of Thoothukudi published the list of eligible Head Constables for the promotion of Sub Inspector of

Police (Taluk) for the year 2005-2006 and sent call letters to the individual Head Constables to participate in the written test held on 18.01.2006, Drill test on 20.01.2006 and viva test on 23.01.2006. Though the petitioner was a regular Head Constable of Thoothukudi District Police Constabulary and the petitioner was on other duty in Q branch, respondents negligently omitted his name from including in the list of Head Constables eligible for promotion for SI and did not send call letter to the petitioner to appear for the promotion process held from 18.01.2016 to 23.01.2016, before the Range Promotion Board. The petitioner submitted a representation, dated 20.01.2006, to permit the petitioner to participate in the promotion process. The petitioner filed W.P.(MD)No.1053 of 2006 with a prayer to direct the Superintendent of Police of Thoothukudi to include the petitioner's name in the list of promotion panel for the year 2005 to 2006 and this Court, vide order, dated 04.02.2006, directed the respondents to consider

the petitioner's representation, dated 20.01.2016 and pass orders. The respondents without passing an order promoted the petitioner's juniors and they have joined the duty on 22.05.2006. After a lapse of more than 3 years, the Superintendent of Police of Thoothukudi had passed an order, dated 13.04.2009 whereby rejected the petitioner's representation. Again, the petitioner filed W.P.(MD)No.4824 of 2009, to quash the order, dated 13.04.2009 and this court, vide order, dated 08.10.2012, quashed the order, dated 13.04.2009 and directed the respondents herein to promote petitioner and render all service and monetary benefits on which the petitioner's juniors were promoted.

4. Aggrieved over the respondents Department preferred a writ appeal in W.A.(MD)No.794 of 2013 and the same was dismissed on 04.04.2017. The respondents had not implemented the order of this court and did not promote the

petitioner as SI of police on par with juniors from 22.05.2006. The petitioner filed a contempt petition in Cont.P.(MD)No.378 of 2018. Thereafter, the respondents passed G.O.Ms.No.1433, Home (Police-III) Department, dated 11.09.2018 and the petitioner's name was included as Serial No.34(a), i.e., below the petitioner's immediate senior K.Saravanaperumal in the promotional panel in the year 2005-2006 and through the order, dated 24.09.2018, of the DIG of Tirunelveli Range, the petitioner was promoted as Inspector of Police on par with the petitioner's junior from 22.05.2006 notionally but, granted monetary benefits only from 02.02.2015. Hence, again the petitioner started the legal battle for disbursing all monetary benefits from 22.05.2006 for the post of Sub Inspector of Police. Thereafter, the petitioner was paid the monetary benefits from 22.06.2006. The petitioner retired on attaining superannuation after 38 years of service. Hence, the petitioner submitted a representation, dated 01.04.2019, to

promote the petitioner as Inspector of Police prior to his retirement. The respondents, vide memo, dated 13.05.2019, published the list of Sub Inspectors selected for pre-promotion course training fit for promotion as Inspector of Police (TK) for granting promotion for the year 2018-2019 and the petitioner's name was placed at Sl.No.241 in the list and the name of the petitioner's immediate junior K.Anbalagan was placed at Sl.No.241. But the lists of Sub Inspectors were not sent for Pre-Promotion Course training and no SI was given promotion in the year 2018-2019 on the crucial date of 01.06.2019, which is a lapse, negligence and dereliction of duty on the part of the respondents. Since the petitioner was due to retire on superannuation on 30.06.2019, the petitioner submitted a representation on 29.05.2019, to the second respondent requesting to promote the petitioner on the basis of priority considering the unblemished total service of 38 years and 13 years of service as Sub Inspector of police. The petitioner

retired on the verge of promotion on 30.06.2019. Thereafter, the respondents issued memo, dated 30.07.2019 and published the 'C' list of promotional panel of 311 Sub Inspectors of Police (TK) fit for promotion for the year 2019-2020 years as on 01.06.2019.

5.The contention of the petitioner was that in this memo, the petitioner's name was not considered, even though the petitioner was in service as Sub Inspector of Police on 01.06.2019. Aggrieved over the said promotional list, the petitioner has preferred the writ petition. The petitioner alleges *mala fide* against the respondents and sought for notional promotion along with service and monetary benefits and consequential revision in the pensionary benefits.

6. The respondents submitted before the learned Single Judge that the petitioner's batchmates and his

immediate juniors were promoted as Inspector of police only in the vacancies that arose in the rank of Inspector of Police by way of promotion after the retirement of the petitioner. Therefore, the learned Single Judge specifically recorded that none of the petitioner's juniors were promoted when the petitioner was in service. Therefore, the petitioner name was not considered even when the petitioner was in service. However, at the time of constitution of the promotion Board, the petitioner reached the age of superannuation and retired from service and none of his juniors were promoted when the petitioner was in service and therefore, the claim now made in the present writ petition deserves no merits for consideration and therefore, the learned Single Judge has dismissed the writ petition. Aggrieved over the same, the present writ appeal has been filed.

7. Heard Mr.A.Thirumurthy the Learned Counsel for the appellant, Mr.J.Ashok, the Learned Additional Government

Pleader and Mr.P.Gunasekaran the Learned for the 4th respondent and perused the records.

8. The appellant submitted that his name was in the 'C' panel list and the respondents are duty bound to prepare 'C' list as on the crucial date, i.e., 01.06.2019. Since the respondents have failed to prepare the promotional panel on the crucial date, there is a lapse, negligence and dereliction of duty on the parts of the respondents. It is seen from the records that the crucial date is 01.06.2019 and the respondents have prepared 'C' list, vide memo, dated 30.07.2019. The crucial date fixed for preparation of 'C' panel is 01.06.2019. However, on the date of issuance of memo, the appellant has already attained superannuation on 30.06.2019. In short, on the date of issuance of memo, i.e., 30.07.2019, the appellant has already attained superannuation and retired from service. Therefore, the appellant does not come under

the zone of consideration and hence, the claim of the appellant cannot be considered.

9.The contention of the appellant that his juniors were promoted and the respondents have deliberately not granted promotion to the appellant. However the respondents replied that the appellant's juniors were granted promotion based on the memo, dated 30.07.2019. But, all the juniors were granted promotion after 30.07.2019, on which date the appellant had already retired from service. Therefore, the claim of the appellant that the appellant was not granted promotion but his juniors were granted promotion is on an erroneous fact.

10.It is the unfortunate case that the appellant was not granted promotion within a period of 30 days, i.e., from the date of crucial date till the date of his retirement. This Court can only sympathize the appellant, but as per law, the

appellant is not entitled to. Therefore, the appellant has not made out any case to interfere with the impugned order of the Learned Single Judge and consequently cannot interfere with the impugned panel and the consequential promotion to the petitioner's juniors.

11. Therefore, the writ appeal fails and the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [S.S.Y., J.]
07.07.2022

Index : Yes / No

Tmg

To

- 1.The Additional Chief Secretary to Government,
Public (Police) Department,
Secretariat, Chennai – 600 009.
- 2.The Director General of Police of
Tamil Nadu,
Dr.Radhakrishnan Salai,
Mylapore, Chennai – 600 004.
- 3.The Commissioner of Police,
Tirunelveli City,
Tirunelveli.

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